IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12054 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHERU @ DHARMENDRA BHANVARSINHCHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12054 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 29th of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 29th_ of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration 5 criminal cases registered against the petitioner on January 29, 2004, June 06, 2004 again on June 6, 2004 June 13, 2004 and on July 27 of 2004 under the Bombay Prohibition Act at Sardarnagar Police Station as well as Prohibition Police Station, North Zone. The petitioner was alleged to have found with possession of 32 liters, 10 liters, 30 liters, 8 liters and 70 liters of country liquor on various occasions. The detaining authority took into consideration the investigation papers in all these five cases. After going through the said material, the detaining authority came to the conclusion that the petitioner was engaged in storing, selling and transporting the country liquor and activities of the petitioner were of bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and affecting adversely the public health. The detaining authority considered other remedies available against the petitioner in general law, but came to the conclusion that the steps which may be taken against the petitioner in general law were likely to take time when the bootlegging activities of the petitioner were required to be prevented forthwith. The detaining authority, therefore, passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. M.R. Prajapati for the petitioner and learned AGP Mrs. HB Punani for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

6. As per the established law to arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority must disclose the difference of cases falling within the breach of law and cases falling under breach of public order. In the present case, the detaining authority entirely relied upon five criminal cases registered against the petitioner and the investigation carried out in those five cases. These five cases are pending for disposal. Now referring to the investigation papers as placed on record, clearly indicates that those cases against the detenu were filed on the ground that he was dealing in liquor. The act of petitioner therefore was in breach of law and hence the offence came to be registered against the petitioner. Going through the investigating papers, it is nowhere disclosed that by the activities of the petitioner was disturbing the even tempo of the life of the community or the society at large or section of society. No widespread danger to society could be inferred from the investigation papers. It is the fall out, reach and impact of the activities which decides that the given activity is affecting the maintenance of the public order and public health. At the most, as alleged, the petitioner might have been found in possession of some country liquor, which is of breach of law, and offences are registered against him and cases are pending. The criminal cases filed against the detenu on the ground that he was dealing in liquor, therefore, has no bearing on the question of maintenance of public order. The petitioner may be tried for such breach of law and may be punished, if found guilty, but surely, the act constituting the offence cannot be said to have affected the even tempo of the life of the community. In this view of the matter the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The

order passed by Police Commissioner, Ahmedabad City, on 29th of July 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Sheru alias Dharmendra Bhanvarsinh Chhara is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair